

DATE: February 6, 2004

FILE REF: NR 135/NMAC

TO: Nonmetallic Mining Advisory Committee (NMAC)

FROM: Tom Portle

SUBJECT: Minutes of January 29, 2004 Nonmetallic Mining Advisory Committee Meeting

Following is a report on the main points from the meeting of the NR 135 Nonmetallic Mining Advisory Committee ["NMAC"], held on January 29, 2004 from 10-4 at the Wisconsin Highway Patrol District One Headquarters Building in DeForest, WI.

NMAC members present: Jim Burgener, Bruce Brown, Sue Courter, Mike Erickson, Ron Garrison, Marty Lehman, Ed Reesman, Bryce Richardson & Gary Werner

Sitting in for NMAC member: None.

NMAC members not present: Matt Stohr

WDNR Staff Present: Dave Kunelius, Dan Graff, Phil Fauble, Dave Misterek, Larry Lynch and Tom Portle

Others Present: Brian Endres & Clint Weninger, Payne & Dolan; Scott Klonke & Eric Fowle, East Central WI Regional Planning Commission; Pat Osborne, Aggregate Producers of Wisconsin, Jen Schuetz, Kramer Co., Pat Stevens Wisconsin Transportation Builders Association.

Main points of discussion, motions and any decisions or necessary "follow-up activities" are presented below:

(Agenda items in ► **bold**)

► **Welcome & Introduction:** **Tom Portle** went over the meeting ground rules and proposed a slight agenda change (voting status matter - Dan Graff would be present in the morning and it was scheduled for the afternoon) which was agreed to.

► **Go Around**

Marty Lehman - Lost Regulatory Authority (RA) contacts in 2 counties; some fees still rather high.

Mike Erickson - reclamation fees and hearings on some road work even though exempt.
- mixing zoning with reclamation in some jurisdictions

Ron Garrison - Ron expressed a concern regarding hybrid ordinances that actually combine the zoning and the reclamation

- one RA charges bonding even when no acreage is actually disturbed.

Ed Reesman - spoke to a fee inconsistency and said the same people were doing both zoning and reclamation.

- in a couple of jurisdictions RA staff do not want to release the NR 135 portion of financial assurances.

Jim Burgener indicated that a codifier had attempted to do the same in his county and he had to resist it.

Dan Graff observed that these were different statutes.

Tom Portle observed that one could see how this could inadvertently happen in some less informed jurisdictions.

► Update on the ***Comprehensive Planning Mineral Resource (Smart Growth/Registration) Workgroup*** (NMAC Subcommittee) - Tom Portle & Eric Fowle

Tom Portle gave a brief overview and background including the make-up and purpose of the workgroup. The group was formed in response to a NMAC motion at the August 2002 meeting.

Pat Stevens distributed and explained a publication he had prepared for the Wisconsin Transportation Builders Association (WTBA). The publication had been reviewed by WTBA members and it reflects discussions with local officials.

Pat stated that everyone is in a bit of a "wait and see" mode owing to legislative efforts to remove the Smart Growth requirements. Pat kindly offered to make the document available and to allow free use of the document to facilitate planning for the nonmetallic mineral resource in the Smart Growth process.

Eric Fowle presented a summary of the Smart Growth legislation and how this land use planning process affects non-metallic mining in Wisconsin. **Eric** handed out the "Rapport" Newsletter and the statement from the Geologic Subcommittee. He spoke to some positives and some of the limits of Smart Growth.

Eric's feeling is that most of this planning is regional in nature and that all parties need better guidance. There is technical committee currently working on the Geologic Resources portion of the Natural Resources Element of the Regional Comprehensive Plan. Their ultimate goal is to come up with a planning model that counties can use to consider planning for future mineral resource needs, not just existing operations. Unfortunately, problems with the original statutory language caused sequencing problems. Because all entities could potentially begin at the same

time there was no guarantee the regional "big picture" perspective could be available in advance, as it should be.

Current efforts are still in an early phase with the focus on providing a "framework". In the future it may be a tougher go because there are a myriad of issues to be addressed and there will probably be more vigorous discussion and need to negotiate during the next phase of plan development.

Dan - are others doing this? **Eric** replies - not really or at least are not doing a very good job.

Gary - How does the RPC plan relate to county or town planning?

It provides the regional "big picture". It provides guidance to counties and local government.

Eric often sees plans come in that don't really deal with the proper identification and needs assessment with regard to the nonmetallic mineral reservation issue.

Bruce Brown is currently working a lot in the Fox Valley. He emphasized the need to have a regional perspective on this issue. **Bruce** also added perspective on the value of setting aside nonmetallic mineral resources for the future on a statewide basis and how the involvement of the workgroup (created by NMAC motion) could be support this objective.

Gary currently sevens on the Dane County group that is addressing aggregate.

Bruce - often county GIS does not provide the necessary layers to adequately address aggregate. Soils, bedrock, surficial deposit materials can be use but are not specific enough.

Bruce sees potential in linking up with more of the DOT data in the future.

Bruce may be able to provide a generic presentation for use when addressing groups.

Ed Reesman indicated that many see the Smart Growth as an "unfunded mandate" and so there is much resistance to and reluctance to engage in the process.

Gary mentioned the Grants that are available from the state to assist in this process. And these are apparently structured in a way where they favor cooperation of several units of government.

Ron Garrison asked if there was any plan that was already completed that was available as an example - Eric and Bruce said there were not.

Gary Werner spoke to the need for a tool to aid in visualizing what the reclaimed minesite would look like down the road to help planning.

Ideas to Consider:

- Put together portfolio of successful reclamation
- Work with the Wisconsin chapter of American Planning Association
- An example of a properly addressed aggregate/mineral component of a plan is needed.
- **Sue** suggested that a presentation be made for the Wisconsin chapter of American Planning Association

Tom Portle indicated that he would sent out an email on February 6, 2004 requesting examples of successful reclamation.

► ***Voting status for Bryce Richardson***

(Bryce is representing WI County Land Conservation Departments) needs to be determined - participate at the bequest of NMAC as per motion)

Dan expressed concerns that the NMAC might be open to a procedural attack if a vote cast by an unappointed tenth member were deemed critical.

Gary observed that there would probably be occasions in which any member might not vote if there were a perceived conflict of interest.

Jim Burgener suggested that full alternate member status be granted. In that case should someone be absent or if someone abstained from voting Bryce would automatically have voting status.

The NMAC, after discussion, unanimously approved language follows:

*"The NMAC accepts Bryce Richardson as a **full alternate member** of the Nonmetallic Mining Advisory Committee representing county land conservation employees. In this decision, the NMAC grants Mr. Richardson voting rights to be exercised in the event that another member abstains or is unable to attend."*

► **Input from partners and public**

Eric Fowle - Scott Kloke will be administer program for WCRPC and Eric will have a diminished role. The RPC is planning on lowering fees.

Clint Weninger - Door County situation is coming up for many operators in the county. Clint alleges that Door County is still exceeding NR 135 standards. Examples and areas of concern include: Highwall issue, excessive financial assurance costs; of particular concern is the assumption that all topsoil will be removed from site. This results in the costly necessity of putting forth FA funds to ensure that money is available in the worst case scenario in which all topsoil required to facilitate reclamation will have to be imported.

Sue advocates for dialogue some sort of meeting - get everyone working together to find "win-win" solutions in unique environment. Among the unique issues Sue sees in Door County. Door county citizen pressure, groundwater situation, much frustration at present.

Dave Misterek offered that the County has been cooperative and open to working out solutions.

► **Statewide risk pool & NR 135 Financial Assurance** - Pat Osborne
(Preliminary discussion on efforts to establish this mechanism - request for NMAC reaction, input & ideas)

Financial Assurance (FA) Risk Pool and Statutory Change

Pat Osborne presented the outline of a conceptual approach to establishing a risk pool; he provided an handout and a very preliminary draft of the statutory change that would be needed to enable the proposed change. In his introductory comments **Pat** indicated that at this time there are still more questions than answers.

Objectives:

- Provide a more affordable and reliable FA tool
- The FA tool should be flexible
- The FA tool should fit in with and complement the existing FA options (not disrupt status quo array of options)
- Participation of operator should be totally voluntary however the RA would have to accept this FA mechanism.
- FA tool could act as an "insurer of last resort" - especially when a surety bond cannot be obtained.

QUESTION AREAS:

Assumption: All pool in the risk sharing thus reducing the individual costs of obtaining and maintaining financial assurance - **Pat** indicated he was not sure this was true.

Worry about a possibly disproportionate cost load for smaller operators.

This suggests sending it "upstream" to DNR (Pat acknowledged that this may be a "false premises"). Concentrate the thing at one level/entity (probably the DNR) thus creating efficiency in review and processing.

So far Pat has been unable to find a private sector underwriter.

Gary asked if there were models of this available from other states. Pat said no.

Ed asked what would protect the risk pool from "bad actors"?

Pat mentioned "reinsurance" and qualified it as to whether it would in fact be an option and mentioned the costs of setting this up.

Pat mentioned that the statutory change could be addressed as a budget issue in the next legislative cycle. 2005.

► **Legislative Update**

► **Change to NR 340 financial assurance options to match NR 135**

These were included in AB 655 which was signed into law and will be effective in February. Newsletter on differences between NR 340 and NR 135 - differences are small.

► **AB 728/ SB 375 Comprehensive Planning:** Fees and Notification

AB 728 - to floor on Tuesday February 3

- notification substitute amendment narrows to property or leaseholder for nonmetallic minerals •
- only applicable when : there is a : s.295/NR 135 permit; Registered nonmetallic mineral deposit.
- Provides an obligation for the affected party to write to the RA
- Also, if RA fails to provide notification it does not render the entire plan "null and void"

► **AB 732/ SB 376 Financial Assurance:** Proposed change to address possible redundancy

Pat indicated that the above bill to eliminate perceived duplicative FA is proceeding.

► **Lunch** - 12:30 - 1:15

After lunch:

Discussion on the Door County issue:

- Obtain examples of issues in dispute between company and county. Important to get actual proposed language and county response since in the past discussions were more around the idea of policy and the actual language was not on the table.

After receiving a written response from Clint Weninger:

- DNR staff will meet with the Door County staff
- DNR staff (likely Portle, Graff & Misterek) will request to be put on the Land Conservation Committee (LCC) agenda in order to speak to some of the broader and related issues

► ***Distinction between operations and reclamation?***

This item was left over from last meeting - not as much urgency in the discussion this time. The concern is that this, sometimes the costs of addressing zoning and operations type issues are being unfairly allocated to NR 135 reclamation and are then reflected in the annual fees.

Tom Portle attempted to reconstruct the dialogue and framed the "bottom line" question - *What practical actions that can be taken to reinforce this distinction?*

Again, as Justin Cavey, Pam Andros and Don Franke pointed out at the last meeting - most times it is difficult to separate these two issues and that, as public entities, the county staff are obligated to respond to public questions and concerns. Sometimes there is a time-consuming need to educate the caller that their concern may be a zoning or operations issue (conditional use) rather than a reclamation issue. They emphasized the difficulty, as a practical matter, in keeping a bright line between operations/ zoning and reclamation

Larry Lynch and I had discussed this and felt that the NR 135 Newsletter might be a good way to approach clarifying the distinction. Tom stated this and brought it up at the NR 135 conference call on February 2 in connection with an article aimed at assisting RA's in preparing for NR 135 audits.

► ***Input on NR 135 Program Implementation Issues needing attention***

(Introduction of this as a regular item - to be used to generate a list of items that need attention)

Mike Erickson indicated that there were problems with the 1 acre exemption that need to be fixed.

► ***Any other business*** (as permitted by law)

(Introduction of this as a regular item - to be used to generate a list of items that need attention)

Ed expressed a concern about high capacity wells - operators concerned that a quarry that is dewatering or the sump that water is discharged from could be considered a high capacity well due to the definition.

The general agreement that any changes in the non-metallic reclamation law should originate or be done in partnership with the NMAC was reiterated. We should continue to make this known to the legislature. Towards this end **Gary Werner** suggested that the NMAC create its own letterhead - **Ed Reesman** indicated that he might be able to assist in this.

► ***Feedback***

We basically skipped this item.

► ***Next Meeting***

The NMAC decided to meet again **in 6 months** - July of 2004. In keeping with the request from the last meeting for a date late in the month July 29 was proposed.

All agreed that the next meeting should again be held in DeForest, WI..

Partial List of Agenda Items for July Meeting:

- Report from the Registration Workgroup.

- Report on the Door County Meetings